

January 21 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 10-0029

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NOVARTIS PHARMACEUTICALS
CORPORATION,

Appellant,

-vs-

PEGGY L. STEVENS,

Appellee.

FILED

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STATE OF MONTANA

NOTICE OF APPEAL

1 NOTICE is given that Novartis Pharmaceuticals Corporation, the
2 Appellant above-named and who is the defendant in that cause of action
3 filed in the Fourth Judicial District, in and for the County of Missoula, as
4 Cause No. DV-08-100, hereby appeals to the Supreme Court of the State
5 of Montana from the following judgments and orders from the above-
6 referenced District Court Action:

7 1. The Judgment dated October 21, 2009 (Dkt. # 419.000);

8 2. The Opinion and Order Denying NPC's Motion for Judgment as
9 a Matter of Law or for New Trial dated December 22, 2009 (Dkt. #
10 458.000);

11 3. The Opinion and Order Regarding Pro Tanto and Collateral
12 Source Offsets and Costs; and Amended Judgment, dated January 20,
13 2010 (Dkt. #486.000), and any orders amending the judgment as
14 contemplated by this Opinion and Order;

15 4. Appellant appeals from all previous orders and rulings excepted
16 or objected to which led up to and resulted in the judgment and orders
17 listed above, including but not limited to those identified below.

18 5. The Opinion and Order Denying Defendant NPC's Motion To
19 Dismiss and/or Summary Judgment and Granting Defendant Patrick
20 Doyle's Motion To Dismiss dated April 8, 2009 (Dkt. # 125.000);

21 6. The Opinion and Order Denying Defendant NPC's Motion to
22 Amend Answer to Add Settled Defendants dated September 16, 2009 (Dkt.
23 # 324.000);

24 7. The Opinion and Order Denying NPC's Motion for Summary
25 Judgment Based on the Statute of Limitations and Denying NPC's Motion
26 for Summary Judgment on All Claims Based on Warnings dated October 8,

1 2009 (Dkt. # 387.000);

2 8. The Opinion and Order Granting In Part and Denying in Part
3 NPC's Motion in Limine Regarding Bisphosphonate Drugs Other Than
4 Zometa and Dosing Regimens Not Prescribed to Plaintiff dated October 13,
5 2009 (Dkt. # 389.000);

6 9. The Opinion and Order Denying NPC's Motion in Limine
7 Pertaining to Osteopetrosis or Pycnodysostosis dated October 13, 2009
8 (Dkt. # 390.000);

9 10. The Opinion and Order Denying NPC's Motion in Limine to
10 Permit NPC to Introduce Prior Pleadings Asserting an Inconsistent Theory
11 of Liability dated October 13, 2009 (Dkt. # 391.000);

12 11. The Opinion and Order Regarding NPC's Omnibus Motion In
13 Limine to Exclude Evidence and Preclude Testimony Regarding
14 Miscellaneous Matters dated October 13, 2009 (Dkt. # 393.000);

15 12. The Opinion and Order Allowing Evidence Regarding Aredia
16 and Reference to Bisphosphonates Generally dated October 14, 2009 (Dkt.
17 # 395.000);

18 13. The Opinion and Order Denying NPC's Motion to Exclude
19 Testimony Regarding Zometa Therapy After Tooth Extraction dated
20 October 16, 2009 (Dkt. # 414.000);

21 14. The Jury Instructions dated October 20, 2009 (Dkt. # 416.700);

22 15. The Verdict dated October 21, 2009 (Dkt. # 418.600);

23 16. All of the Court's orders and rulings entered in the above-
24 entitled action including, but not limited to, the Court's orders before,
25 during, and after trial.

1
2 The Appellant also appeals the following trial rulings:

3 1. The exclusion of Dr. Morris's answer before the Montana
4 Medical-Legal Panel and Plaintiff's interrogatory responses to NPC and Dr.
5 Schmidt (Trial Tr. 310:15-315:20, 728:13-729:5, 805:4-808:20, 1466:7-21);

6 2. The exclusion of Plaintiff's prior pleadings, expert disclosures,
7 discovery responses and all evidence of statements and allegations
8 previously made in the course of her former lawsuit against Dr. Schmidt
9 and Guardian Oncology (Tr. 728:13-729:5, 1018:1-6);

10 3. The ruling allowing Joni Landes to offer hearsay testimony
11 regarding warnings given to Dr. Schmidt after the tooth extraction to prove
12 what warning NPC should have given before the extraction (Tr. 1012:21-
13 1022:7, 1028:22-1029:20);

14 4. The exclusion of the e-mail Dr. Schmidt received from Dr.
15 Felsenfeld regarding warning information prior to Plaintiff's tooth extraction
16 (Tr. 1208:5-16, 1210:20-24);

17 5. The refusal of proposed jury instructions and verdict form
18 questions regarding the statute of limitations (Tr. 1611:6-1614:8);

19 6. The rejection of NPC's proposed jury instructions that correctly
20 stated that its duty was to provide an adequate warning to the treating
21 physician, Dr. Schmidt (Tr. 1621:10-23, 1622:6-14)

22 7. The jury instruction suggesting that NPC was required to
23 provide warnings to non-prescribing healthcare providers (Tr. 1599:11-
24 1600:23, 1602:4-25, 1656:2-11, 14-20);

1 8. The jury instruction defining NPC's common law duty to warn
2 according to federal administrative standards contained in FDA regulations
3 (Tr. 1608:18-1610:24, 1660:21-1662:7);

4 9. The denials of NPC's Rule 50(a) Motions for Judgment (Tr.
5 1456:12-1465:1, 1843:10-19).

6 **THE APPELLANT FURTHER CERTIFIES:**

7 1. That this appeal is subject to the mediation process required by
8 M. R. App. P. 7. The money judgment being sought is not less than
9 \$5,000.

10 2. That this appeal is not an appeal from an order certified as final
11 under M. R. Civ. P. 54(b).

12 3. That no notice is required by M. R. App. P. 27 to be given to the
13 Supreme Court and to the Montana Attorney General because this case
14 does not challenge the constitutionality of any act of the Montana
15 Legislature.

16 4. That all available transcripts of the proceedings in this cause
17 have been ordered from the court reporter contemporaneously with the
18 filing of this notice of appeal.

19 5. That included herewith is the filing fee prescribed by statute.

20 DATED this 21st day of January, 2010.

21 Joe G. Hollingsworth, Esq.
22 Katharine R. Latimer, Esq.
23 Gary I. Rubin, Esq.
24 Robert E. Johnston, Esq.
25 Philip M. Busman, Esq.
26 HOLLINGSWORTH LLP

and

WORDEN THANE P.C.
Attorneys for Appellant Novartis
Pharmaceuticals Corporation

By: 
W. Carl Mendenhall

1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 21, 2010, I filed a true and accurate
3 copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana
4 Supreme Court; and that I served true and accurate copies of the foregoing
5 NOTICE OF APPEAL upon the Clerk of the District Court, and each
6 attorney of record in the above-referenced District Court action, as follows:

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